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April 4, 2014

VIA ECF

The Honorable Jesse M. Furman
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: Casey O’Jeda et al. v. Viacom Inc., et al.
13-cv-5658 (JMF)

Dear Judge Furman:

On behalf of Defendants, we filed electronically moments ago a Memorandum of Law in Opposition to Plaintiff’s Motion to Amend the Complaint, which is timely served and filed pursuant to Federal Rules of Civil Procedure (“FRCP”) 5 and 6, and Local Civil Rules (“Local Rule”) 6.1 and 6.4. We believe that there was an inadvertent administrative miscalculation of the deadline for the filing of Defendants’ opposition, and ask that the Court consider the opposition and make any revision that the Court deems necessary to Docket No. 41.

Plaintiff’s counsel filed via ECF a Motion to Amend the Complaint on March 19, 2014. Because no return date was set by the Court (or in the Notice of Motion), Local Rule 6.1(b) specifies that, “On all civil motions any opposing affidavits and answering memoranda shall be served within fourteen days after service of the moving papers.... In computing periods of days, refer to [FRCP] 6 and [SDNY Local Rule] 6.4.” FRCP 6(d) (“Additional Time after Certain Kinds of Service”) specifies that, “When a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C), (D), (E) or (F), 3 days are added after the period would otherwise expire under Rule 6(a).” Service via the Court’s Electronic Case Filing system constitutes service as “electronic means,” pursuant FRCP 5(b)(2)(E) and/or FRCP 5(b)(3) (providing that filing through the “the court’s transmission facilities” constitutes service under Rule 5(b)(2)(E)). Accordingly, when motion papers are served upon a party by means of the Court’s CM/ECF system, the deadline for the non-movant’s opposition is seventeen days

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from the date of filing, not including the filing date itself. *See also Alli v. Stewart-Bowden*, 11 Civ. 4952 (PKC)(KNF), 2013 WL 6503507 (S.D.N.Y. Dec. 5, 2013).

Here, Plaintiff's motion to amend the complaint was filed and served via ECF on March 19, 2014, seventeen days from which is tomorrow, April 5, 2014. Accordingly, Defendants' opposition was timely filed today.

Respectfully submitted,



Lyle S. Zuckerman

LSZ/lg